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California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO**

In re the Marriage of GARY S. and
DENISE L. KANTER.

GARY S. KANTER,

Appellant,

v.

DENISE L. KANTER,

Respondent.

E069043

(Super.Ct.No. FAMSS1507285)

**ORDER MODIFYING OPINION
AND DENYING PETITION
FOR REHEARING
[NO CHANGE IN JUDGMENT]**

The petition for rehearing is denied. The opinion filed in this matter on April 23, 2019, is modified as follows:

The first full paragraph on page 10 of the opinion is modified to add the words “due to several issues and circumstances of complexity in my case” after the word declaration, so that the sentence reads as follows:

Mr. Kanter asserts that his statement made in his declaration “due to several issues and circumstances of complexity in my case” required the trial court to infer confidential information was imparted to Hudson.

Except for this modification, the opinion remains unchanged. This modification does not effect a change in the judgment.

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CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.

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(Super.Ct.No. FAMSS1507285)

OPINION

APPEAL from the Superior Court of San Bernardino County. Michael Torchia,
Temporary Judge. (Pursuant to Cal. Const., Art. VI, § 21.) Affirmed.

Law Offices of David B. Dimitruk and David B. Dimitruk for Appellant.

Pettibone Law and Douglas J. Pettibone for Respondent.

I.

INTRODUCTION

Appellant, Gary Kanter, met with Attorney Aaron Hudson, to retain him in his contested divorce matter. Hudson declined representation but provided Mr. Kanter with a referral to Attorney Daniel Rinaldelli, who shared office space in Hudson's office. Mr. Kanter subsequently hired Rinaldelli. Three months later, Hudson closed his family law practice and went to work at Christopher R. Abernathy, a Professional Law Corporation (Abernathy law firm), which represents Mr. Kanter's former spouse, respondent, Denise Kanter in the divorce case. Mr. Kanter moved to disqualify Attorney Christopher Abernathy from representing Ms. Kanter due to Abernathy's association with Hudson. The court refused to disqualify Abernathy from representing Ms. Kanter.

This appeal follows. Mr. Kanter contends (1) the court erred in denying his motion to disqualify Abernathy because an attorney-client relationship arose from the initial meeting that required Abernathy's presumed disqualification since Hudson and Rinaldelli were in the same law office and shared space; and (2) the court erroneously relied on Hudson's various statements in his declaration in ruling there were no grounds to disqualify Abernathy.

We conclude no attorney-client relationship arose from Hudson's limited contact with Mr. Kanter and affirm the trial court's order denying his recusal motion.

II.

FACTS AND PROCEDURAL HISTORY

Rinaldelli represents Mr. Kanter in a contested divorce matter against Ms. Kanter. The Abernathy law firm represents Ms. Kanter. In 2016, Hudson owned a law office located in Ontario. In conjunction with Hudson's law practice, Hudson employed a paralegal and a secretary. During 2016, Hudson also rented office space to Rinaldelli.

In July 2016, Mr. Kanter met with Hudson to discuss retaining him as counsel in his divorce litigation. Hudson did not give Mr. Kanter any legal advice and did not discuss strategy, quote or charge a fee for the meeting. Instead, Hudson referred him to Rinaldelli. In September 2016, Mr. Kanter retained Rinaldelli to represent him in his divorce case. In December 2016, Hudson closed his law practice and the following month became employed as the managing attorney for the Abernathy law firm.

In February 2017, Mr. Kanter moved to disqualify Abernathy from representing Ms. Kanter based on Hudson's association with the Abernathy law firm. In opposition to the motion, the Abernathy law firm contended that no conflict of interest existed. Hudson submitted a declaration setting forth details about his office meeting with Mr. Kanter and his shared space arrangement with Rinaldelli.

Hudson's declaration explained that the two law practices were autonomous and had been maintained independently. Hudson acknowledged that Rinaldelli had rented office space from him and that Rinaldelli had shared Hudson's personnel, a computer network and file cabinet storage space. However, Hudson did not know how Rinaldelli's

case files were maintained and secured, and he did not discuss Mr. Kanter's case with Rinaldelli. Hudson stated that he had no further communication with Mr. Kanter except to say "hello" when he saw him in the common area of the law office. Additionally, as a precaution, the Abernathy law firm implemented an "ETHICAL WALL" in the Kanter matter between Abernathy and Hudson to avoid any potential conflict.

In ruling on Mr. Kanter's disqualification motion, the trial court relied on the declarations submitted by the parties. The trial court articulated the test for attorney disqualification was whether Hudson had obtained confidential information about Mr. Kanter's case. The trial court stated that even though the attorneys shared office space, Hudson and Rinaldelli's law practices were independent, and the attorneys never shared case files or information. The court also remarked that it had no information that any confidential information had been received and exchanged.

Mr. Kanter timely filed a notice of appeal from the trial court's order denying his motion to disqualify Abernathy.

III.

DISCUSSION

Mr. Kanter claims a substantial confidential attorney-client relationship arose when he initially met with Hudson to discuss hiring him and argues Abernathy must be vicariously disqualified because Hudson now works with Abernathy. Based on *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 283, Mr. Kanter asserts the trial court was required to apply a conclusive presumption that a conflict of interest existed. Mr. Kanter also

argues the trial court erroneously decided his disqualification motion based on statements made by Hudson in his declaration.

As we will explain, we disagree that a conclusive presumption applies in this case or that the trial court erred in denying Mr. Kanter's motion to disqualify Abernathy.

A. General Principles

A motion to disqualify counsel is constrained by the principle that reversal may be predicated only upon a showing of abuse of the trial court's discretion. (*In re Marriage of Zimmerman* (1993) 16 Cal.App.4th 556, 561 (*Zimmerman*).) "We are also bound in our reviewing function by the substantial evidence rule. [Citations.] Thus, if substantial evidence supports the trial court's express or implied findings of fact, we review the resulting legal conclusions for an abuse of discretion. [Citation.] The judgment of the trial court is presumed correct; all intendments and presumptions are indulged to support the judgment; conflicts in the declarations must be resolved in favor of the prevailing party, and the trial court's resolution of any factual disputes arising from the evidence is conclusive." (*Id.* at pp. 561-562.)

If the trial court resolved disputed factual issues, the reviewing court should not substitute its judgment for the trial court's express or implied findings supported by substantial evidence. (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1143 (*Speedee*).)

B. Presumed Disqualification

Mr. Kanter argues that the law presumes that confidential information was imparted because appellant met with Hudson. We disagree. The determination about whether a conflict exists and whether the attorney's disqualification is required is made on a case-by-case analysis. (*California Self-Insurers' Security Fund v. Superior Court* (2018) 19 Cal.App.5th 1065, 1076.)

“A disqualification motion involves a conflict between a client's right to counsel of his or her choice, on the one hand, and the need to maintain ethical standards of professional responsibility, on the other.” (*Clark v. Superior Court* (2011) 196 Cal.App.4th 37, 47-48 (*Clark*).) “[A] formal retainer agreement is not required before attorneys acquire fiduciary obligations of loyalty and confidentiality, which begin when attorney-client discussions proceed beyond initial or peripheral contacts. An attorney represents a client—for purposes of a conflict of interest analysis—when the attorney knowingly obtains material confidential information from the client and renders legal advice or services as a result. [Citations.]” (*SpeedDee, supra*, 20 Cal.4th at p. 1148.)

If an attorney-client relationship exists, and a conflict of interest requires an attorney's disqualification from a matter, the disqualification normally extends vicariously to the attorney's entire law firm. (*SpeedDee, supra*, 20 Cal.4th at p. 1139, citing *Flatt v. Superior Court, supra*, 9 Cal.4th at p. 283.) The rule of vicarious disqualification is based upon the doctrine of imputed knowledge—the knowledge of one

attorney in a law firm is the knowledge of all attorneys in the firm. (*Speedee, supra*, at pp. 1153-1154.)

“The automatic disqualification rule arose in the context of private practice, at a time when it was relatively uncommon for attorneys to move from one firm to another.” (*City and County of San Francisco v. Cobra Solutions, Inc.* (2006) 38 Cal.4th 839, 855 (dis. opn. of Corrigan, J.).) The rule is based upon the doctrine of imputed knowledge. “The imputed knowledge theory holds that knowledge by any member of a law firm is knowledge by all of the attorneys in the firm, partners as well as associates.” (*Rosenfeld Construction Co. v. Superior Court* (1991) 235 Cal.App.3d 566, 573.)

Even when an attorney’s current representation is adverse to the interests of a former client, disqualification is only necessary where the attorney, by reason of his or her former representation, has obtained, or was reasonably likely to obtain, confidential information material to the current representation. (*Responsible Citizens v. Superior Court* (1993) 16 Cal.App.4th 1717, 1724; *Adams v. Airojet-General Corp.* (2001) 86 Cal.App.4th 1324, 1333.) Therefore, contrary to Mr. Kanter’s claim that disqualification is mandatory, we hold that when an attorney’s recusal is based upon a vicarious relationship, as here, as opposed to an attorney-client relationship, the presumption of disqualification is rebuttable. (See *Kirk v. First American Title Ins. Co.* (2010) 183 Cal.App.4th 776, 801; *Med-Trans Corp., Inc. v. City of California City* (2007) 156 Cal.App.4th 655, 668.)

C. The Attorney-client Relationship

Mr. Kanter argues that his initial consultation as a matter of law created a fiduciary relationship with Hudson, and that we must apply the substantial relationship test. However, the substantial relationship test only applies where there is an existing attorney-client relationship. We must therefore determine whether there is evidence of an attorney-client relationship between Mr. Kanter and Hudson.

“Before an attorney may be disqualified from representing a party in litigation because his representation of that party is adverse to the interest of a current or former client, it must first be established that the party seeking the attorney’s disqualification was or is “represented” by the attorney in a manner giving rise to an attorney-client relationship. [Citations.]” (*Koo v. Rubio’s Restaurants, Inc.* (2003) 109 Cal.App.4th 719, 729, quoting *Civil Service Com. v. Superior Court* (1984) 163 Cal.App.3d 70, 76-77.)

The burden is on the party seeking disqualification to establish an adverse attorney-client relationship. (*In re Lee G.* (1991) 1 Cal.App.4th 17, 27; *Clark, supra*, 196 Cal.App.4th at p. 49.) “[A] motion to disqualify normally should be decided on the basis of the declarations and documents submitted by the parties.” (*In re Complex Asbestos Litigation* (1991) 232 Cal.App.3d 572, 583, fn. 5.) Mr. Kanter had the burden of demonstrating to the trial court on the basis of evidence submitted that a conflict of interest existed before the court was required to disqualify Abernathy. He failed to do so

because no attorney-client relationship was ever established between Mr. Kanter and Abernathy.

In *Zimmerman*, *supra*, 16 Cal.App.4th 556, the court analyzed whether an attorney-client relationship existed. Summary judgment was granted in the former husband's favor, but the appellate court reversed and remanded the case for further proceedings. (*Id.* at p. 560.) After the case was remanded, the divorced wife sought to recuse her former husband's attorney, arguing that she had previously consulted with the attorney's partner about the summary judgment proceeding. (*Ibid.*) In support of the disqualification motion, the wife provided evidence that she had outlined her case to the attorney's partner in a 20-minute telephone conversation, and that he had referred her to another attorney. (*Ibid.*) The trial court, however, denied the wife's disqualification motion and the decision was affirmed. (*Id.* at pp. 560-561.)

The *Zimmerman* court recognized that the party must show a “substantial relationship” between the matters involved in the previous representation and the attorney's present employment. (*Zimmerman*, *supra*, 16 Cal.App.4th at p. 563.) The *Zimmerman* court discussed an “additional and separate requirement” that must be demonstrated to warrant recusal; namely, whether the attorney obtained confidential information material to the current dispute that would normally have been imparted to the attorney. (*Id.* at p. 564.) Based on the additional requirement, the *Zimmerman* court found that no attorney-client relationship existed because the partner performed no services other than recommending another attorney, and the divorced wife did not

provide any evidence of actual confidential disclosures. Therefore, the attorney's "brief and insubstantial" contact with the wife was unlikely to have imparted any confidential disclosures. (*Id.* at pp. 564-565.)

Mr. Kanter asserts that his statement made in his declaration "due . . . to the complexity in my case" required the trial court to infer confidential information was imparted to Hudson. Mr. Kanter could have provided a declaration for the court to review in camera identifying generally the information he discussed with Hudson. Mr. Kanter, however, did not meet his burden of establishing confidential information was likely imparted to Hudson with only a generalized statement that his case was complex. The record does not reflect the nature of the discussion or the purported complexity in his case.

Similar to *Zimmerman*, the declarations herein establish only brief and insubstantial contact occurred between Mr. Kanter and Attorney Hudson during their meeting in July 2016. The limited contact did not give rise to an attorney-client relationship because Mr. Kanter only "described the procedural history of and property involved with the case." There is no evidence that Hudson acquired confidential information because he performed no legal services, provided no legal advice, and did not discuss case strategy with Mr. Kanter. Also, Hudson did not learn of any confidential information from Rinaldelli, because Hudson did not discuss Mr. Kanter's case with Rinaldelli. All Hudson did was to refer Mr. Kanter to Rinaldelli.

In *SpeedDee, supra*, 20 Cal.4th 1135, in evaluating whether an attorney-client relationship existed, the Supreme Court agreed that the *Zimmerman* court had focused on the appropriate factor—whether the attorney had acquired any confidences or whether the contact was clearly of a preliminary and peripheral nature. (*SpeedDee, supra*, at p. 1149.) The *SpeedDee* court concluded that if the contact is preliminary and peripheral, and there is no evidence that confidential disclosures were likely to occur, then no attorney client relationship is created.

Although Mr. Kanter submitted his declaration, he did not identify any confidential information that had been disclosed during his meeting with Hudson in July 2016. Rather, Mr. Kanter was concerned that Hudson and Rinaldelli had shared office space and staff together, which created a “danger of [a] conflict of interest.” Further, the shared work space did not give rise to an inference that Rinaldelli had disclosed confidential information to Hudson in light of Hudson’s declaration that he did not share cases, fees, or responsibilities and each maintained the law practices “completely independent and autonomous.”

Moreover, it was Mr. Kanter’s burden to establish an adverse attorney-client relationship existed. (*Clark, supra*, 196 Cal.App.4th at p. 49.) Mr. Kanter could have presented rebuttal evidence through Rinaldelli or other former office staff detailing how Hudson may have had access to confidential information. No such rebuttal declarations were submitted showing confidential information was received or exchanged. We find

Mr. Kanter failed to materially dispute the evidence and carry his burden of proof to establish a confidential relationship existed between him and Mr. Hudson.

D. Abuse of Discretion

Mr. Kanter argues the trial court “chose to believe statements made by Hudson that no confidential information was imparted,” and challenges several statements made by Hudson in his declaration. Here, substantial evidence supports the trial court’s findings. Mr. Kanter did not provide any facts to substantiate that an attorney-client relationship existed between himself and Hudson. Hudson states that he did not obtain confidential information from Mr. Kanter, they only discussed peripheral facts, and he did not give Mr. Kanter advise or discuss legal strategy. Hudson also states that the two law practices were maintained independently. It was well within the trial court’s discretion to decide Mr. Kanter’s disqualification motion based on the parties’ written declarations. (*In re Complex Asbestos Litigation, supra*, 232 Cal.App.3d at p. 583, fn. 5.)

Because substantial evidence in Hudson’s declaration supports the trial court’s decision to deny Mr. Kanter’s motion to disqualify Abernathy, we conclude that the trial court did not abuse its discretion.

IV.

DISPOSITION

The judgment is affirmed. Respondent is awarded costs on appeal.

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CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.